IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.614 OF 2005
IN
NOTICE OF MOTION NO.466 OF 2004
IN
SUMMONS FOR JUDGMENT NO.96 OF 1998
IN
SUMMARY SUIT NO.3548 OF 1997

R.N.P. Sinha ..Appellant.
(Orig. Defendant)

Vs.

Sevantilal M. Shah ..Respondent.
(Orig. Plaintiff)

....

Shri. M.C. Shah i/b Shri. R.R. Sharma for the Appellant.
Mr. P.G. Lad for the Respondent.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

17th January, 2007.

P.C. :

1. Admit. By consent heard forthwith.

2. This Appeal arises from the order dated 10th December, 2004 passed in Notice of Motion 466 of 2004 in Summary Suit 3548 of 1997. By the impugned order the Notice of Motion has been disposed of. Though the request for setting aside of the ex

parte judgment was rejected, the Learned Single Judge had offered the Appellant an opportunity to contest the proceedings by depositing 50% of the principal amount. However, the impugned order apparently discloses that the Appellant had flatly declined to make any such deposit.

3. The plain reading of the impugned order discloses that the Appellant had failed to appear before the Learned Single Judge on the date of hearing and consequently the Summons for Judgment came to be decided by the order dated 6th November, 2003. The said order was sought to be set aside by taking out a Notice of Motion on the ground that the clerk of the advocate did not notice the matter on the Board on the relevant date. However, no affidavit of the concerned clerk was filed. Consequently, there was no cogent material available on the record to justify the contention on behalf of the Appellant that there was sufficient cause for the Appellant not to appear before the Court on the date on which the Summons for Judgment was decided by the Court i.e. on 6th November, 2003. Consequently, no fault can be found with the impugned order rejecting the contention on behalf of the Appellant.

4. While this order was being dictated, the Learned Advocate for the Appellant after taking instructions from the Appellant submitted that the Appellant may be permitted to contest the proceedings by allowing him to deposit a sum of Rs.3 lacs (Rupees three lakhs only) with liberty to the Respondent to withdraw the same on furnishing a bank guarantee. In view of what has been transpired in the course of hearing of the matter, without going into the merits of the case, we are inclined to permit the Appellant to have the opportunity of being heard on the Summons for Judgment subject to the Appellant depositing a sum of Rs.3 lacs on or before 31st March, 2007. Accordingly, the Appeal is partly allowed. The impugned order is modified to the extent that the Appellant is permitted to deposit a sum of Rs. 3 lacs on or before 31st March, 2007 and on such deposit being made, the order passed on 6th November, 2003 in Summary Suit 3548 of 1997 shall stand set aside with liberty to the Appellant of being heard in the matter by the Learned Single Judge before any order in that regard being passed. In case the Appellant fails to deposit the amount of Rs. 3 lacs on or before 31st March, 2007, the order passed today shall stand automatically recalled without being

referred to the Court and the order dated 6th November, 2003 passed in the said Summary Suit shall stand restored for further proceeding in accordance with the provisions of law. On deposit of Rs. 3 lacs as above by the Appellant, the Respondent shall be entitled to withdraw the same by furnishing a bank guarantee of any nationalized bank. The Appeal is accordingly disposed of in the above terms. There shall be no order as to costs.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)